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499-113—73——1

In the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Alaska

No. 70-92 Cr

STATE OF ALASKA, PLAINTIFF

vs.

JOSHAWAY DAVIS, A/K/A JOSHUA BURL DAVIS, A/K/A JOSHUAWAY BURL DAVIS AND ANDREW JAMES LEONARD, DEFENDANT(S)

DEFENDANT(S)

Indictment for Burglary Not in a Dwelling (Count I) Violation Section AS 11.20.100, Grand Larceny (Count II) AS 11.20.140

THE GRAND JURY CHARGES:

COUNT I

That on or about the 16th day of February, 1970, at or near Anchorage, in the Third Judicial District, State of Alaksa, Joshaway Davis a/k/a Joshua Burl Davis a/k/a Joshuaway Burl Davis and Andrew James Leonard did wilfully, unlawfully and feloniously break and enter a building, not a dwelling, to-wit: the Polar Bar, Fifth Avenue and Eagle Street, where property of value was then and there kept, with intent to steal therein.

All of which is contrary to and in violation of AS 11.20.100 and against the peace and dignity of the State of Alaska.

COUNT II

That on or about the 16th day of February, 1970, at or near Anchorage, in the Third Judicial District, State of Alaska, Joshaway Davis a/k/a Joshua Burl Davis a/k/a Joshuaway Burl Davis and Andrew James Leonard did wilfully, unlawfully and feloniously take, steal and carry away, with intent to permanently deprive the owner thereof, property of value, to-wit: one Mosler safe and a quantity of United States cur-

rency and coin, having a total value in excess of One Hundred Dollars ($100.00).

All of which is contrary to and in violation of AS 11.20.140 and against the peace and dignity of the State of Alaska.

Dated at Anchorage, Alaska this 24 day of February, 1970.

A true bill.

_____,

Assistant District Attorney.

_____,

Grand Jury Foreman.

Witnesses examined before the grand jury:

1. George Weaver.
2. Robert Gray.

No. 7092 Cr.

Superior Court, State of Alaska, Third Judicial District

STATE OF ALASKA

vs.

JOSHAWAY DAVIS, A/K/A JOSHUA BURL DAVIS, A/K/A JOSHUAWAY BURL DAVIS AND ANDREW JAMES LEONARD

Indictment: Burglary not in a Dwelling (Count I) as 11.20.100, Grand Larceny (Count II) as 11.20.140.

A True Bill, Ralph N. Dobbs, Foreman, 2/25/70.

Presented to the Court by the Foreman of the Grand Jury in Open Court, in the presence of the Grand Jury and filed in the Superior Court, State of Alaska, Third Judicial District.

A. M. VOKACEK,
Clerk.

By: J. SHORE,
Deputy.

Bail fixed in the amount of $2,000.00 Ct. I, 2,000.00 Ct. II.

_____,
Judge.

In the Superior Court for the State of Alaska,
Third Judicial District

No. 70-92 Cr.

[Filed in the Superior Court, State of Alaska, Third District, Dec. 11, 1970, A. M. Vokacek, Clerk, By ——————, Deputy]

STATE OF ALASKA, PLAINTIFF

vs.

JOSHAWAY DAVIS, A/K/A JOSHUA BURL DAVIS, A/K/A JOSHUAWAY BURL DAVIS, DEFENDANT

JUDGMENT AND COMMITMENT

On this 4th day of December, 1970, came the attorney for the State of Alaska and the defendant appeared in person and with counsel Robert Wagstaff.

It is adjudged that the defendant has been convicted upon jury verdict of guilty of the offense(s) of Burglary Not in a Dwelling and Grand Larceny as charged in Counts I and II of the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court.

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Commissioner of the Department of Health and Welfare of the State of Alaska or his authorized representative for a period of four (4) years on Count I and four (4) years on Count II to run concurrent with the sentence imposed in Count I.

It is ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the appropriate officer or other authorized person and that the copy serve as the commitment of the defendant.

Dated at Anchorage, Alaska, this 11th day of December, 1970.

——————,
Judge of the Superior Court.

roved as to form and content:

——————.

2 In the Superior Court for the State of Alaska, Third Judicial District

No. 70-92 Cr.

STATE OF ALASKA, PLAINTIFF

vs.

JOSHAWAY DAVIS, A/K/A JOSHUA BURL DAVIS, A/K/A JOSHAWAY BURL DAVIS, DEFENDANT

TRANSCRIPT OF TRIAL BY JURY, CONTINUED (EXCERPT)

Before the Honorable C. J. Occhipinti, Superior Court Judge, Anchorage, Alaska, September 30, 1970, 2:05 o'clock p.m.

APPEARANCES

For the Plaintiff: J. Justin Ripley, Assistant District Attorney, 1001 Fourth Avenue, Anchorage, Alaska.

For the Defendant: Robert Wagstaff, Attorney at Law, 1208 Gambell Street, Anchorage, Alaska; Irvine Ravin, Attorney at Law, 1208 Gambell Street, Anchorage, Alaska.

3 PROCEEDINGS

The COURT. I'll ask the jurors to step out in the hall for a moment please.

[Whereupon the court excused the jury from the courtroom, after which the following proceedings were had:]

1399.8

Mr. RIPLEY. Your Honor, it's not my—may I be heard briefly?

The COURT. Yes.

Mr. RIPLEY. It's not my purpose to accuse counsel of bad faith, but I suspect that he's acting in an area where he doesn't have complete information and he may not be in fact familiar with the rules applicable. We have in fact a juvenile witness who has in fact—is presently on probation out of juvenile court. He was not waived, he was not bound over as an adult and this person is an essential state's witness, but under the rule, which is juvenile rule 23 and backed up by AS 47.10.080 (g) it is absolutely clear that a juvenile record, with the excep-

tion of sentencing procedures where specifically permitted by the court it's absolutely excluded, privileged, cannot be used. I call the court's attention specifically to those sections. Therefore, it would be my position that if counsel—frankly when it first came out I had thought perhaps to mousetrap him with it, but the tactical dangers of that impressed themselves on me over the noon hour and it's now that I move for a pro-
4 tective order to exclude any attack upon this witness' credibility from that juvenile conviction. I'm not talking about traffic; if he has traffic, have at him, but as to that particular civil determining—it's not a conviction of the court, it's not viewed as a conviction, it's a civil finding and the rule is clear; there's absolutely no way that you can use that. Therefore I resist counsel's use of this. Admittedly, a pretrying the case technique is a very effective one and he's doing a fine job of it, but since I can't wait until cross examination when he asks him that question and jump up and make my point, I move for a protective order at this time. I call the court's attention to those 2 rules and statutes I've cited.

The Court. First let me ask, is this the witness you're referring to?

Mr. Wagstaff. Yes, Your Honor. Perhaps I could capsulize it for the court.

The Court. Very well.

Mr. Wagstaff. What this is, this is a man named Richard Green, who—is that——

Mr. Ripley. Boy.

Mr. Wagstaff [continuing]. Right?

Mr. Ripley. A boy.

Mr. Wagstaff. A boy, all right, a juvenile. How old is he, 16?

Mr. Ripley. Sixteen then I believe. He is presently a juvenile.

5 Mr. Wagstaff. But at any rate he's on probation for the crime of burglary. He—this safe, the safe in question that was burglarized from the Polar Bar was found either on his property or near his property. He was tied in with it at any rate. He was right there near it. He lives up towards Palmer and that's where this safe was found. The police department went up and talked to him and showed him 6 photographs, one of which was the defendant's, a 10 year old photograph it was then incidentally, and he said immediately—or identified at least Mr. Davis as having been the person that he saw next to the safe. Now my point is this: I'm not attempting to impeach